

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1061 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 No.

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DY.CONSERVETOR OF FORESTS

Versus

RAMESHBHAI RAMRCHAND SHAH

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Appearance:

MR.K.P.RAVAL, ADDL., PUBLIC PROSECUTOR for the Petitioners.

MR NILESH M SHAH for the Respondent .

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 28/10/96

ORAL JUDGEMENT

The petitioners by this petition under Article 227 of the Constitution of India have challenged the judgment and order dated 6-6-89 passed by the Additional Sessions Judge, Bharuch in Criminal Appeal No. 22/88

setting aside the order passed by the Deputy Conservator of Forest, Rajpipla ( East ). By virtue of the order passed by the Deputy Conservator of Forest, the tempo belonging to the respondent has been confiscated for carrying forest goods.

Mr. K.P.Raval, learned Additional Public Prosecutor, appearing for the petitioners, has submitted that the order passed in appeal by the learned Additional Sessions Judge is without jurisdiction as, in his submission, the learned Additional Sessions Judge is not competent to decide an appeal under section 61-D of the Forest Act. In support of his submission, reliance is placed on the decision of this Court in the case of State of Gujarat vs Siddik Haji Ibrahim Patel (1996) 1 Guj.L.R. 798. This Court has taken a view that section 61-D of the Forest Act confers jurisdiction on persona designata, namely, the Sessions Judge, and hence, the Sessions Judge can alone hear the appeal. The order of the Additional Sessions Judge is, therefore, without jurisdiction and liable to be quashed under Article 226 of the Constitution of India. In view of the ruling of this Court, it is required to be held that the order passed in appeal by the learned Additional Sessions Judge is without jurisdiction. In the circumstances, the matter is required to be remanded to the learned Sessions Judge, Bharuch to hear and decide the appeal afresh in accordance with law.

In the result, this petition is allowed. The judgment and order dated 6-6-89 passed by the learned Additional Sessions Judge, Bharuch in Criminal Appeal No. 22/88 is set aside and the matter is remanded to the learned Sessions Judge, Bharuch for hearing and disposal of the said appeal afresh in accordance with law. Considering the fact that the alleged offence under the Forest Act had taken place on 12-1-87, the learned Sessions Judge is directed to give top priority to the said appeal and decide the same within four weeks from the receipt of the writ of this Court. Rule is made absolute accordingly with no order as to costs.

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